

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

BRUCE HAMPTON FERGUSON,	:	
	:	
Petitioner,	:	
	:	No. 5:11-CV-90094 (CAR)
v.	:	28 U.S.C. § 2255
	:	No. 5:04-CR-62 (CAR)
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	

***ORDER ON THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE***

Before the Court is the United States Magistrate Judge’s Recommendation [Doc. 69] that Petitioner’s Motion to Vacate or Set Aside the Conviction and Sentence Pursuant to 28 U.S.C. § 2255 [Doc. 66] be denied. The Magistrate Judge recommended dismissing the Petition because it is a second or successive Petition and Petitioner has not received the necessary authorization to file a second or success petition from the Eleventh Circuit under 28 U.S.C. § 2255(h). Having considered the Recommendation, this Court agrees with the conclusion of the United States Magistrate Judge.

On July 5, 2011, Petitioner filed two documents with the Court. The first was titled “Appeal From The United States District Court For The Middle District of Georgia - Certificate Of Appealability.” The document was docketed as an Objection to the Report and Recommendation. The second document was a Motion for Leave to Proceed *In Forma Pauperis*. Petitioner’s intent in filing these documents is unclear. Having carefully read the first document, it appears that

Petitioner took the Magistrate Judge's Report and Recommendation to be a final order and then filed the document in an attempt to comply with the requirement that he receive authorization from the Eleventh Circuit under 28 U.S.C. § 2255(h). While neither of those conclusions are explicit in Petitioner's filing, the Court believes that was most likely his intention because Petitioner did not raise any objections to the Magistrate Judge's conclusion that his petition was a second or successive petition and because the document appears to be directed to the Eleventh Circuit.

In any event, the Court will address the three most likely possibilities: that the document was an Objection to the Report and Recommendation, that the document was a request for a Certificate of Appealability from this Court to appeal the Magistrate Judge's not-yet-final order, and that the document was a request for authorization from the Eleventh Circuit to file a second or successive petition.

To the extent that the document is an Objection, having considered the Magistrate Judge's Report and Recommendation along with the Objection, the Court agrees with the Magistrate Judge's recommendation that the Petition must be dismissed because it is a second or successive petition filed without the necessary authorization.

To the extent that the document is a request for a certificate of appealability, Petitioner's request [Doc. 70] is **DENIED**. Likewise, Petitioner's Motion for Leave to Proceed IFP [Doc. 71] is **DENIED**.

To the extent that the document is a request for authorization to file a second or successive petition under 28 U.S.C. § 2255(h), that authorization must come from the Eleventh Circuit Court of Appeals and such a request should be directed to that Court.

The Recommendation of the Magistrate Judge therefore **ADOPTED** and **MADE THE ORDER OF THE COURT**; the instant petition for federal writ of habeas corpus is hereby

DENIED. To the extent that Docs. 70 & 71 request a certificate of appealability and leave to proceed IFP on appeal, those motions are **DENIED**.

SO ORDERED, this 15th day of July, 2011.

S/ C. Ashley Royal
C. ASHLEY ROYAL, JUDGE
UNITED STATES DISTRICT COURT

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